

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

|                                 |   |                                    |
|---------------------------------|---|------------------------------------|
| <b>UNITED STATES OF AMERICA</b> | : | <b>CIVIL ACTION NO. 4:06-CR-53</b> |
|                                 | : |                                    |
| v.                              | : | <b>(Chief Judge Conner)</b>        |
|                                 | : |                                    |
| <b>FOSTER J. PRICE, JR.,</b>    | : |                                    |
|                                 | : |                                    |
| <b>Defendant</b>                | : |                                    |

**ORDER**

AND NOW, this 10th day of January, 2019, upon consideration of defendant's motion (Doc. 813) "for clarification and appropriate relief pursuant to 2241(d) and 59(e)" in which defendant attempts to avail himself of 28 U.S.C. § 2241(d) and 28 U.S.C. § 2255(e) to challenge his federal sentence, (Doc. 813 at 1-2), and it appearing that defendant's motion seeks to retroactively apply several recent amendments to the United States Sentencing Guidelines and to otherwise collaterally attack his sentence, (see Doc. 813 at 3-9), and the court noting that such challenges generally must be raised in a motion under 28 U.S.C. § 2255, see 28 U.S.C. § 2255(a); Okereke v. United States, 307 F.3d 117, 120 (3d Cir. 2002), and the court finding that defendant's motion does not implicate the exceptionally rare situation where remedy by motion under Section 2255 would be "inadequate or ineffective," see In re Dorsainvil, 119 F.3d 245, 251 (3d Cir. 1997), and the court therefore construing defendant's instant motion as one for relief under Section 2255, and the court observing that upon receipt of a Section 2255 motion the court must dismiss the motion "[i]f it plainly appears from the motion . . . that the moving party is not entitled to relief," 28 U.S.C. § 2255 Rule 4(b), and it further appearing that defendant

previously filed a Section 2255 motion that was decided on the merits, (see Docs. 684, 733), and the court noting that a defendant filing a second or successive Section 2255 motion must “move in the appropriate court of appeals for an order authorizing the district court to consider the application,” 28 U.S.C. § 2244(b)(3)(A); see also 28 U.S.C. § 2255(h), and the court further observing that when a defendant files a second or successive Section 2255 motion without first obtaining permission from the requisite court of appeals, the district court lacks jurisdiction to consider the motion’s merits, Okereke, 307 F.3d at 121, and the court finding that defendant has not petitioned the appropriate court of appeals for leave to file a second or successive Section 2255 motion, it is hereby ORDERED that:

1. Defendant’s motion (Doc. 813) “for clarification and appropriate relief pursuant to 2241(d) and 59(e)” is deemed to be a second or successive motion under 28 U.S.C. § 2255 and is DISMISSED without prejudice to defendant’s right to petition the United States Court of Appeals for the Third Circuit for permission to file a second or successive motion under 28 U.S.C. § 2255. See 28 U.S.C. § 2244(b)(3)(A); 28 U.S.C. § 2255 Rule 4(b); 28 U.S.C. § 2255(h).
2. The court finds no basis to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); 28 U.S.C. § 2255 Rule 11(a).

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania